IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2050 of 2006(R)

PETITIONER:

V.PUSHPAN, H.S.A (MATHS),
GOVT. HIGH SCHOOL, TUVVUR, MALAPPURAM DISTRICT.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SMT.C.V.RAJALAKSHMI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION (R) DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF HIGHER EDUCATION, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM.

3. THE ADMINISTRATIVE OFFICER, HIGHER SECONDARY EDUCATION DEPARTMENT, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BOJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO: 2050/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE ORDER GO RT NO. 2248/02/G. EDN DT. 20/7/2002.

EXT.P2. COPY OF THE ORDER NO. AD. B2/18157/2003/HSE DT. 28/6/2003 BY R2.

EXT.P3. COPY OF THE ORDER NO. A1/13977/04 DT. 24/6/2004 BY THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.

EXT.P4. COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE R2 DT. 2/7/2004.

EXT.P5. COPY OF THE JUDGMENT DT. 18/11/2005 IN WPC NO. 37216/2004.

EXT.P6. COPY OF THE ORDER NO. AD. B2/2886/05/HSE DT. 2/1/2006 BY THE R2.

EXT.P7. COPY OF THE ORDER GO P NO. 780/83/FIN DT. 16/12/83.

EXT.P8. COPY OF THE RELEVANT PAGE OF THE ANANTHARAMAN'S BOOK ON SERVICE MATTERS.

[True Copy]

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K.K.DENESAN, J

W.P.(C)NO.2050 of 2006

Dated this the 22nd day of January, 2007

JUDGMENT

The petitioner is working as HSA (Maths) in a Government High School. Challenging Ext.P6, it is contended that large number of his juniors who have been promoted overlooking his claim are continuing as higher secondary school teachers. Based on that alleged fact, it is stated that a hostile discrimination has been practiced against the petitioner. The petitioner has sought for a writ of mandamus directing the second respondent to give him a posting as HSST (Maths) in any one of the existing vacancies and for a declaration that he is entitled to be posted as higher secondary school teacher (Maths) in the first arising vacancy after 30.6.2004 on cancelling the unavailed portion of the leave and his rejoining duty. Consequential reliefs also have been prayed for.

2. In the counter affidavit filed by the second respondent, it is stated that though four vacancies had arisen on 30.6.2004, the petitioner was not eligible to be considered against those vacancies. Vacancies against those vacancies arose between 30.6.2004 and 31.7.2005 could be made only on the basis of the seniority list then its

existed and finalised thereafter as per proceedings dated 15.6.2006. The rank assigned to the petitioner in that list is 237. It is asserted by the respondents that none who is assigned lower rank in that list has been promoted to the post of HSA. The respondents have contended that the petitioner who has not chosen to challenge the final list cannot sustain a claim based on the ranks assigned to the parties in a provisional list. The petitioner has filed a reply affidavit reiterating his claim that his name ought to have been considered against the vacancy arose on 30.6.2004.

3. Heard both sides.

4. The petitioner can succeed only if it is established that he was one of the senior most persons having the requisite qualifications for being considered against the 4 vacancies of HSA Maths arose on 30.6.2004. Though it is contended that his juniors were promoted, it is neither demonstrated nor established that anybody having rank below 237 has been promoted. That being the position, I am inclined to accept the assertion made by the respondents that no junior who is assigned rank below 237 in the final list has been promoted as higher secondary school teacher. Similarly, it is not shown that teachers

lacking the requisite qualification as on 30.6.2004 have been promoted. In the absence of such vitiating factors, the contentions of the petitioner have no legal basis.

5. The petitioner cannot be granted the reliefs sought for. The writ petition is dismissed.

K.K.DENESAN, JUDGE

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